



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
DIRECTIVE**

**DIRECTIVE NUMBER
317**
**DISTRIBUTION DATE
May 6, 2010**

1. **SUBJECT: OBTAINING U VISAS IN INVESTIGATED CASES**
2. **PURPOSE:** To set forth the procedures for certifying, under limited circumstances, requests for a "*U Visa*."¹
3. **BACKGROUND:** The federal *Victims of Trafficking and Violence Protection Act of 2000* created the *U Visa*, which is available to immigrant victims of serious crimes. The purpose behind the *U Visa* was to recognize that many undocumented crime victims fear that assisting law enforcement could lead to deportation. The *U Visa* encourages these victims to report crimes and assist in their prosecution by offering temporary legal status and work authorization. To obtain a *U Visa*, victims must demonstrate to the U.S. Citizenship and Immigration Services (USCIS), via certification by a law enforcement agency, their willingness to cooperate in a qualifying investigation or prosecution.

Because the Department of Fair Employment and Housing (DFEH) investigates claims under the Fair Employment and Housing Act (FEHA) and the Ralph Civil Rights Act, the DFEH may qualify as a law enforcement agency that can submit certifications to the USCIS on behalf of certain undocumented complainants. There are, however, several factors which would need to be present before DFEH could submit a *U Visa* certification.

4. **PROCEDURES:**

A. **When a *U Visa* is Appropriate:**

- 1) The first step in determining when a *U Visa* certification is appropriate would be that the case under investigation would have to allege acts covered under the FEHA or Ralph Act and where the allegations, if proven, would fall into one of the offenses covered by the *U Visa* program:²
 - a) Sexual Assault;
 - b) Sexual Exploitation;
 - c) Abusive Sexual Contact;

¹ This Directive may be applied to U Visas created by future amendments to the *Victims of Trafficking and Violence Protection Act*.

² 8 U.S.C. § 1101(a)(15)(U)(iii).

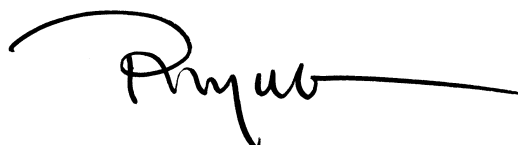
- d) Rape;
 - e) Trafficking;
 - f) Domestic Violence;
 - g) Murder;
 - h) Manslaughter;
 - i) Abduction;
 - j) Extortion;
 - k) Torture;
 - l) Incest; and
 - m) Prostitution.
- 2) The DFEH would have to be conducting an ongoing investigation into the complainant's FEHA or Ralph Act claim.
 - 3) The complainant would either have to be cooperating or willing to cooperate in DFEH's investigation.
 - 4) The complainant would have to request DFEH to submit the *U Visa* certification on his or her behalf.

B. Submitting the request for U Visa Certification:

- 1) If all the factors listed in 4. (A) (1-4) are present, the DFEH can, and should, prepare and submit a law enforcement certification form (Attached Form I-918, Supplement B, U Nonimmigrant Status Certification) to USCIS.
- 2) The Consultant should fill out the form including:
 - a) Details of the crime;
 - b) Complainant's personal data;
 - c) Knowledge of the incident; and
 - d) Helpfulness to the investigation or prosecution.
- 3) The Consultant should sign the form. Signing the form would not indicate the DFEH's sponsorship for the complainant/immigrant, and the DFEH may, and should, notify USCIS if the complainant failed to meet his or her ongoing responsibility to cooperate with the Department. Accordingly, while the DFEH's participation in this federal immigration program will likely be limited, a *U Visa* certification by the DFEH may, in certain circumstances, provide the Enforcement Division with another effective tool to ensure the thorough investigation of alleged FEHA or Ralph Act violations.
- 4) DFEH staff members are not to question complainants regarding their immigration status. The Department's new *U Visa* Practice does not change this approach. However, if a complainant voluntarily raises his or her immigration status with DFEH staff, and DFEH staff believes that pursuing a *U Visa* for the complainant would be

appropriate under the circumstances, then please contact immediately, through your District Administrator/Regional Administrator, Deputy Director, or Chief of Enforcement. The Chief of Enforcement will review any certification before it is submitted to USCIS.

5. **APPROVAL:**

A handwritten signature in black ink, appearing to read "Phyllis W. Cheng", with a long horizontal flourish extending to the right.

Phyllis W. Cheng, Director

May 6, 2010

Date